

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No.

74-2437

UNITED STATES OF AMERICA,

Appellee

v.

RAYMOND JOHNSON,

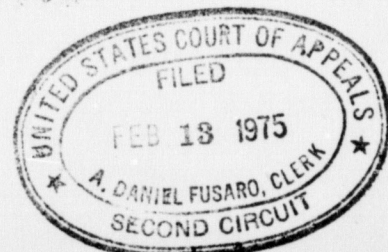
Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES

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ONLY COPY AVAILABLE

DATE	TIME	VEHICLE	LIC	SUBJECTS
12/8/73	2325	BUICK SKYLARK	DMY-186 VA.	RICHARD HOROWITZ JEFFREY SHECKMAN
12/9/73	0120	CHEV	M7189 CT	JOHN MICHAEL FRANK STEWART Stephen Leone
12/9/73	0255	Dodge	5811B-JT	Roy Johnson
	0445	VW ^{KADWIN} _{CHIA}	MW 2 Conn	THOMAS KISPAKOWKZ
	1015	Bus		Dennis Carin
	1330	RAMBLER 754303 ME		BERT ALAIN MORIN DEBORAH A CLAPP
	1400	DATSON	MASS ALAINZ	
Bus	1600	Russell, Kevin		Robert Coburn
	1700	Toronto	F74 263 MASS	Don Clary Mark Wootley
	1710	SAAB	LF 7491 CONN	J. KINNAH P. DIEDERICH J. London R. MARSON M. SULLIVAN
	1900 1725	Chrysler	105-370 MASS	
	1925	Bus	212 RIB NY	R. Laberge Lenny Murray Allison Lee
	1950	Mustang	3C 6425 PENN.	
12/9/73	2000	MUSTANG	31A 934	IRA S. PHILIP 1 USC
	2030	Ford Shelby	534 139	Rashad Little
	2040	CADDY	OB 86 NY	G. RAGAN C. P. Little J. BLASZAK L. RAGAN
	2140	PLYMOUTH	2D 2608	EARL KAUFMAN 1 CAN
Bus	2200	Thompson, Dennis William Fattum		
		Robert LYONS		
12/10/73	0045	BROOKS, EDWIN (DRIVER)		66 CHEV. UT# 81777
12/10/73	6110	DELAIR		T. BLODIN, RICHARD CHAVELLE, MARCEL BERGERON, PHILLIPS KEVIN WARREN
"	1015	CHEVROLET	7240D	BLUMBERG, GAIL
"	1045	Bus	BROWN	HALL DONALD
"		BROWN	CT	JOHNSON ART
		GTO	F03407	
	1150	Cheng	NY-313260	

1 was in Canada and Mr. LOEWE said in New Hampshire.

2 Q. Did you subsequently ascertain their citizenship?

3 A. I did that, it was that of U.S.

4 Q. Now, did you inquire as to how long they had been outside

5 the United States?

6 A. I did, I asked them how long they had been out of the

7 country and they said they had gone to Canada yester-

8 day, meaning the day before.

9 Q. And did you make any inquiries as to the purpose of that

10 trip?

11 A. I did.

12 Q. And what did you receive as a response from each of those?

13 A. Mr. JOHNSON said the purpose of the trip was to go to

14 look for motorcycle parts and the driver, Mr. LOEWE,

15 said, "Harley Davis parts".

16 Q. Now, did you observe anything else about the automobile or

17 the persons as they came up?

18 A. The passenger, Mr. JOHNSON seemed nervous and ill at

19 ease.

20 Q. Now did you subsequently make any kind of referral of the

21 automobile?

22 A. I did, I referred them to Customs.

23 Q. And you say you referred them to Customs, physically, what

24 does that mean that you had done with the automobile

at that point?

A. In this case, we were in the second traffic lane and we

had them pull over into and back in the first lane, and

1 SA. Inspector KINIRY held the panel and I was able to
2 reach inside and felt the bag.

3 Q. Now, were you able to pull anything out?

4 A. Yes, sir, I pulled out first, a large cellophane type
5 bag.

6 Q. And did you pull out any other bags?

7 A. Yes, sir, subsequently upon further reaching inside
8 the door cavity, I found a second bag, a smaller one.

9 (GOVERNMENT'S EXHIBITS #1 and #2, BAGS WITH SUBSTANCE, marked
10 for identification)

11 Q. Mr. HAMILTON, I show you what's been marked Government's
12 Exhibit #1 and #2 for identification and ask if you
13 can identify, first of all, start with Government's
14 Exhibit #1, can you identify that, please?

15 A. Yes, sir, that's the second bag that I removed from the
16 vehicle.

17 Q. Now, did you put your initials on the bag that you removed
18 from the vehicle?

19 A. Yes, I did.

20 Q. Now, directing your attention to Government's Exhibit #1
21 for identification, would you examine that and see if
22 you find any initials on that bag, please?

23 A. Yes, my initials are right there.

24 Q. Okay now, Mr. HAMILTON, there appears to be here actually
two bags at this point, is that a correct statement?

A. Excuse me.

Q. There are actually two bags with respect to Government's

- 1 A. Yes, sir, the following Monday morning.
- 2 Q. Now, where did you keep the packages between the time when
- 3 you picked them up, what date was this you first re-
- 4 ceived them, or what day of the week?
- 5 A. Friday.
- 6 Q. When did you send them out?
- 7 A. Monday morning following.
- 8 Q. Now, where did you store them in between?
- 9 A. In a safe we have in the office at High Gate.
- 10 Q. Now when you mailed them you sent those down on Monday,
- 11 how did you send them down?
- 12 A. Registered mail United States Postal Service.
- 13 Q. Now, I show you what's been marked Government's #3 and ask
- 14 you if you can identify that, sir?
- 15 A. Yes, sir, that's the box I used to forward it in.
- 16 Q. When you say that is the box you used, how can you tell
- 17 that's the box you used?
- 18 A. Well, the address label on it is addressed to United
- 19 States Customs Laboratory, 408 Atlantic Avenue, Boston
- 20 zip code and I have in my handwriting in the upper
- 21 right-hand corner in red, written REG, R E G , regis-
- 22 tered mail, "receipt requested" and requested is ab-
- 23 breviated, R E Q.
- 24 Q. Now, you sent both of the packages out in their entirety
- to Boston, is that correct?
- A. Yes, sir.
- Q. And where did you send them to in Boston?

1 A. United States Customs Laboratory, 408 Atlantic Avenue,
2 Boston, Mass., 02210.

3 Q. Now, did you seal the box before sending it out?

4 A. Yes, sir.

5 Q. And I think you may have answered this but just to make
6 sure, how did you send this out, what type of mail?

7 A. Registered Mail, Return Receipt Requested.

8 MR. O'NEILL: I have no further ques-
9 tions, Your Honor.

10 MR. GIBSON: No questions of Mr.

11 CLARK.

12 (WITNESS EXCUSED AND WITHDREW)

13 G-A-R-R-Y G-A-R-D-N-E-R, having been called as a
14 witness, was duly sworn by the Clerk
15 and testified on his oath as follows:

16 DIRECT EXAMINATION BY MR. O'NEILL:

17 Q. Can we have your name, sir?

18 A. Garry GARDNER.

19 Q. Now, how are you employed, Mr. Gardner?

20 A. As a Special Agent for the United States Customs Service.

21 Q. And how long have you been so employed?

22 A. About three years.

23 Q. And what are your duties as a special agent of the U.S.
24 Customs Service?

A. I investigate violations of customs laws and related
laws.

Q. Now, directing your attention to December 28, 1973, were

1 speak with an individual there at that time, is that
2 correct?

3 A. Yes.

4 Q. Now, did you have a conversation with Mr. JOHNSON there on
5 that date?

6 A. Yes, I did.

7 Q. Now, directing your attention to that particular time when
8 you were there with Mr. JOHNSON, would you describe as
9 objectively as you can, what his attitude was with
10 toward you, with respect to speaking to you?

11 A. Do you mean what my impression was?

12 Q. Whatever you can best convey. The only thing I want to ask
13 you is that when you convey it, please indicate whether
14 it was your impression or whether he manifested it so
15 that there is no confusion to the Court, that is what
16 I am concerned about.

17 A. Well, I would have to say it was my impression that he
18 was basically cooperative and that he did want to talk
19 to me. In fact I had been told, and I believe I
20 stated earlier, that I had a conversation with the in-
21 spectors upon arrival at which time they advised me of,
22 you know, the events which had taken place prior to my
23 arrival. And at that time, Inspector KINIRY told me
24 that Mr. JOHNSON had asked him, started to tell him
something about being a hitch hiker and Inspector KINIRY
said he had cut it short and told him to wait until I
got there and tell his story to me. And my impression

1 was that he did want to talk with me.

2 Q. Well eventually when he did speak, when he did speak with
3 you, did you coax words out of him or did you ask him
4 questions and he responded freely or hesitatingly? How
5 would you describe that exchange?

6 A. I would say his exchange, - I would describe him as
7 being - he seemed nervous but he was basically cooper-
8 ative, basically, - my impression was that his position
9 was, yah, I'll talk with you because I have nothing to
10 hide. What do you want to know? And he basically
11 wanted to tell me his story. What, of the events which
12 took place.

13 Q. He subsequently did give you an explanation, is that correct?

14 A. Yes, he did, yes.

15 Q. Now, during your conversations with Mr. JOHNSON, did he
16 indicate to you, or did you ask him, whether he had
17 been arrested previously?

18 A. Well, after I advised him of his rights, as a standard
19 procedure, I looked over his personal history sheet,
20 which is an identifying information with the inspectors
21 which the inspectors gather to prove identification.
22 Driver's license, height, weight, that type of thing.
23 I basically, went through that sheet and there is an
24 area on there where it states, you know, prior arrests,
at which time I asked him, had he been arrested before?

Q. What was his response to that question?

A. He said that he had.

1 A. Inspector HAMILTON.

2 Q. All right, please go ahead.

3 A. Inspector Supervisor, Inspector CLARK went to assist
4 him and Inspector CLARK asked me to come to the car
5 and look down the right, front door panel.

6 Q. And, did you do so?

7 A. I did.

8 Q. What did you observe there?

9 A. I saw what appeared to be a plastic bag.

10 Q. And were there any people standing around the vehicle who
11 were not customs officials?

12 A. Yes, there were two people, the occupants of the vehicle,
13 standing beside and a little bit to the rear of the car.

14 Q. Now, did you see any of those individuals here in Court today?

15 A. Yes, sir.

16 Q. Would you describe where that individual is sitting and
17 what he is wearing?

18 A. The individual sitting over there in the blue suit.

19 Q. Your Honor, we ask the record reflect the identification
20 of Mr. JOHNSON.

21 THE COURT: (No audible response).

22 Q. Now, did you take any action with respect to the passengers?

23 A. At that point in the belief that the bag contained
24 contraband I asked the subjects to come into the office

1 the Immigration office, as it were, and at that point
2 did a weapons search on the subject.

3 Q. And did you give him any kind of a warning up to that
4 point in time?

5 A. At that point, I read the MIRANDA Warning.

6 Q. Now, what did you state to him once you got him inside?

7 A. I told him that we had reason to believe that there
8 was contraband in the car, that they were being de-
9 tained for further examination to determine what it
10 was and for possible questioning by a special agent.

11 Q. Now, what did you do after having had this discussion with
12 h . him?

13 A. I returned to the car to assist Inspector- HAMILTON in
14 taking the, what turned out to be two plastic bags
15 from the car, at this point, one large one was removed.

16 Q. Now, at the time that you left the two individuals, where
17 were they seated?

18 A. They were seated side by side in the Immigration of-
19 fice.

20 Q. Where is the Immigration Office in relation to where the
21 Customs Office is located?

22 A. It is a little difficult to describe it. It is two
23 large lobbies with an open doorway, no door, between
24 them.

1 there the day that it was found in the vehicle.

2 Q. That is how does it compare in terms of volume that it
3 takes up compared to what it appeared to on that time?

4 A. Again I would have to say space-wise, a little less
5 volume.

6 Q. Now, did there come a time when Mr. JOHNSON had a conversa-
7 tion with you after that instance where you'd been
8 inside?

9 A. On one occasion.

10 Q. And what was that conversation?

11 A. Mr. JOHNSON stopped me when I was going, I believe,
12 from the phone to the counter and said, "Does it mat-
13 ter that I am a hitch hiker?"

14 Q. What was your response?

15 A. I told him that there would be a special agent arriv-
16 ing shortly and he could tell him his story.

17 Q. Now, how long was that after the individuals had been
18 brought inside?

19 A. I would say, thirty to forty-five minutes.

20 Q. Had you, what if anything, had been discussed earlier
21 between you and Mr. JOHNSON concerning hitch hikers?

22 A. Nothing.

23 Q. Was this the first time you had walked by Mr. JOHNSON, or
24 had there been other occasions? How many times had you

1 Q. Approximately when was that?

2 A. October 1969.

3 Q. After you moved from CONNECTICUT to NEW HAMPSHIRE, did you
4 continue to maintain your friendship with RAYMOND
5 JOHNSON?

6 A. Yes.

7 Q. And can you give us a rough idea of as to how often you
8 two might see each other?

9 A. For a while you know, few times a year, sometimes
10 maybe a little bit more.

11 Q. Whereabouts in New Hampshire did you family move to?

12 A.. Walpole, New Hampshire.

13 Q. And do your parents live there now?

14 A. Yes.

15 Q. And is that where you usually reside?

16 A. Yes.

17 Q. Is it, let me rephrase that. Can you tell us to what
18 degree of closeness you consider RAYMOND JOHNSON to
19 be of your family?

20 A. I consider him to be a pretty good friend.

21 Q. And what about your parents, can you, do you know how they
22 feel about RAYMOND JOHNSON?

23 A. My parents have always liked RAY.

24 Q. From time to time have they invited him to visit your

1 A. Yes.

2 Q. I mean did he come to visit you in New Hampshire a fair
3 number of times after you moved out of Connecticut,
4 didn't he?

5 A. Yes.

6 Q. Wouldn't it be accurate to describe he was reasonably
7 close friend?

8 A. Well I used to go to Connecticut a lot and visit him.

9 Q. All right, did you go down to Connecticut fairly frequent
10 to visit him also?

11 A. Yes.

12 Q. Is it a fair statement to indicate that you were close
13 friends?

14 A. Yes.

15 Q. And it is also a fair statement to indicate that you are
16 still close friends, is it not?

17 A. Yes.

18 Q. Now, I think you indicated that you moved to New Hampshire
19 in October of 1969, is that correct?

20 A. Yes.

21 Q. And since that time, approximately how many occasions
22 would you say Mr. JOHNSON has been up to New Hampshire
23 to visit you?

24 A. Maybe 50 times.

1 Q. Maybe fifty times?

2 A. (No oral response)

3 Q. How many times have you been down to Connecticut to visit
4 him?

5 A. I don't know, I used to go to Connecticut a lot, not
6 just to visit him but to do other things also. You
7 know when I'd see him, you know, most of the times
8 that I was down there.

9 Q. And what, - this is more "comparable" to you, approximately
10 how many occasions would you say you saw him down
11 there in Connecticut since you moved up to New
12 Hampshire in 1969?

13 A. Probably a couple of hundred.

14 Q. And had you talked with him on the telephone periodically?

15 A. Yes.

16 Q. And when he called or came to visit you up in New
17 Hampshire, did he come to visit you on any particular
18 regular basis or was it when he felt like driving up
19 or how would you describe it?

20 A. I guess when he felt like coming up there.

21 Q. Now, I think you indicated that he didn't, excuse me, did
22 you normally, did he normally call you to let you
23 know he was coming?

24 A. No.

1 Q. Now you're saying you don't know his first name?

2 A. Well it's, you know, I could incriminate a person by
3 saying that.

4 Q. I'll ask you again what is his name, Mr. Loewe?

5 A. Hisname was Clyde.

6 Q. Clyde?

7 A. (No oral response)

8 Q. How do you spell that?

9 A. C-L-Y-D-E.

10 Q. Are you absolutely sure it was Clyde?

11 A. Not absolutely sure, no.

12 Q. This person that you spoke to up there, how did he speak,
13 did he speak French, English, Spanish or what language
14 did he speak?

15 A. Frenchand English I guess.

16 Q. And what was his primary language, do you know?

17 A. French, I would imagine.
difficulty

18 Q. Did you have any/conversing with him?

19 A. No.

20 Q. You speak French and English yourself?

21 A. No.

22 Q. Well, how did you converse with him then if you only speak
23 English and you said that he spoke French and English?

24 A. I heard him speak French.

1 Q. His name was Clyde, C-L-Y-D-E?

2 A. I think so.

3 Q. Do you know his last name, what his last name was?

4 A. No.

5 Q. And how many occasions had you seen him previously?

6 A. Five or six.

7 Q. And had you made contact with him in the same way?

8 A. No, not really, different ways.

9 Q. How were the different ways that you made contact with him?

10 A. Sometimes I would drive right up there and call him
11 when I got there.

12 Q. Do you use the same phone number every time?

13 A. Yes.

14 Q. And did you meet with him in the same location each time?

15 A. No.

16 Q. And what was your purpose on proceeding on trips up there?

17 A. To buy methamphetamine.

18 Q. So you bought methamphetamine from this individual Clyde,
19 is that correct?

20 A. Yes.

21 Q. Clyde is the gentleman who spoke with a French accent?

22 A. Yes.

23 Q. Now, you're sure his first name was Clyde, is that correct?

24 A. I'm not really positive. I think so. Something like

1 that.

2 Q. How did you, - how did you first get to know his name,
3 did you learn from somebody else or did he call you
4 or how did you first learn?

5 A. I met him in Montreal.

6 Q. What were the circumstances under which you met him there?

7 A. I just met him in a bar.

8 Q. What was the name of the bar?

9 A. I never knew the name of the bar.

10 Q. Where was it located?

11 A. On Sherbrooke Avenue or something like that, Sherbrooke
12 Street.

13 Q. How did you happen to meet him?

14 A. I went up there and I did a little asking around.

15 Q. Excuse me?

16 A. I went up there and did a little asking around.

17 Q. And people you referred to this individual names as Clyde?

18 A. No.

19 Q. How did you find Clyde then?

20 A. Just happened that he was in the same place I was in.

21 Q. How were you introduced to him?

22 A. I don't think I really was.

23 Q. Well, how did you learn his name?

24 A. He told me.

- 1 Q. At some point in time you were, you were never introduced
2 to him, is that right?
- 3 A. Not formally.
- 4 Q. And what, what approximately was the date that the first
5 time that you met CLYDE?
- 6 A. Around the middle of October.
- 7 Q. Around the middle of October of 1973?
- 8 A. (No oral response)
- 9 Q. But you do not know where it was that you met him, is
10 that correct?
- 11 A. That's correct.
- 12 Q. Do you have any idea, - was this in the City of Montreal?
- 13 A. Yes.
- 14 Q. Any idea where?
- 15 A. Just told you on Sherbrooke Avenue somewhere, I don't
16 remember the name of the bar.
- 17 Q. Do you remember, - any idea which end of Sherbrooke Avenue
18 or anything like that?
- 19 A. No, not really, I don't know that much about Montreal.
- 20 Q. But you were able to find an area where someone was willing
21 to sell methamphetamine to you, is that correct?
- 22 A. Yes.
- 23 Q. And you went up there in October and met with Clyde, is
24 that correct?
- A. Yes.

- 1 Q. What did he sell you?
- 2 A. About two ounces of methamphetamine.
- 3 Q. How much did you pay for it?
- 4 A. I don't remember, it was about three hundred dollars.
- 5 Q. Three hundred dollars or three hundred for the two?
- 6 A. Three hundred for the two.
- 7 Q. Where did this transaction take place?
- 8 A. In this bar.
- 9 Q. Did he have it with him on the first occasion you met him?
- 10 A. No.
- 11 Q. Will you explain to us how he got it, please?
- 12 A. I don't know how he got it, you know, he just went
13 some place and came back two minutes later and he had it.
- 14 Q. How much later?
- 15 A. Two minutes.
- 16 Q. Two minutes later?
- 17 A. (No response).
- 18 Q. He was just gone for two minutes?
- 19 A. Around there, about that amount of time.
- 20 Q. And he came back in and the deal went through, is that
21 right?
- 22 A. (No oral response).
- 23 Q. What did you do after you obtained the two ounces?
- 24 A. Went back to New Hampshire.
- Q. And what route did you take back?
- A. The old route to 7 and then down 89.
- Q. Did you go down through High Gate Springs on that occasion?

- 1 A. (No oral response)
- 2 Q. And where were the two ounces on that occasion?
- 3 A. I don't remember.
- 4 Q. But did you know it was illegal to enter the United States
- 5 with it?
- 6 A. Yah, I guess so.
- 7 Q. Well, did you know it was illegal to enter the country
- 8 with methamphetamine, or didn't you?
- 9 A. No.
- 10 Q. You didn't know it was illegal to enter the United States
- 11 with methamphetamine?
- 12 A Right, you know I wasn't really thinking right, you
- 13 know, I wasn't, straight, you know?
- 14 Q. Well, Mr. LOEWE, you went to Montreal to get it though,
- 15 right?
- 16 A. Yes.
- 17 Q. But you didn't know it was illegal to bring it back into
- 18 the United States?
- 19 A. Yah, I guess I knew it was illegal to bring it back but
- 20 I wasn't you know, -
- 21 Q. But you just said a minute ago that you didn't think it was
- 22 illegal, didn't you?
- 23 A. Well, I don't know what I was thinking about then.
- 24 Q. So you were somewhat confused at that time?
- 25 A. A little bit.
- 26 Q. Was that because you were using it?
- 27 A. Probably.

1 Q. How were you using it?

2 A. Snortin' it.

3 Q. What kind of form was that first part you got in, was it
4 pasty, crystal, liquid, what?

5 A. Crystal.

6 Q. And how frequently were you using it?

7 A. Two or three times a week.

8 Q. That is all?

9 A. Yah.

10 Q. And what did you do with the remaining?

11 A. Sold it.

12 Q. Now you came down through to the United States and you
13 think now that it was illegal in some manner, is that
14 a fair statement, or isn't it?

15 A. Yes.

16 Q. But you don't know where you put it in the car, is that
17 right?

18 A. Put it in lots of different places, every time.

19 Q. Well, let's go through the different places you put it in.
20 Where did you put it on different occasions. Specify
21 those if you would, please.

22 A. Well, one car I had there was a place underneath where
23 you pull plug out underneath for a drain hole, like if
24 you were, your trunk or something fills up with water,
and I used to take the plug out and just put it up in
there.

Q. I take it you couldn't look down from the, - if you open

- 1 A. It was either fifteen or eighteen dollars, I think.
- 2 Q. Is that for the two of you or a piece?
- 3 A. For the two of us.
- 4 Q. Did you pay that in U.S. or Canadian currency?
- 5 A. U.S.
- 6 Q. And you left Mr. JOHNSON there, is that right?
- 7 A. Yes.
- 8 Q. Well, weren't you concerned about the fact that you were
- 9 leaving at 2:00 o'clock in the morning or whatever,
- 10 excuse me, let me withdraw that question, and rephrase
- 11 it. You planned on leaving around 2:00 o'clock in the
- 12 morning, is that correct?
- 13 A. Yes.
- 14 Q. And how long did you expect to be gone?
- 15 A. Couple of hours at the most.
- 16 Q. You weren't concerned at all that Mr. JOHNSON would hear
- 17 you when you left?
- 18 A. No.
- 19 Q. You weren't afraid that if he woke up while you were gone
- 20 that he would call the police or something because he
- 21 didn't know where you were?
- 22 A. No.
- 23 Q. You just decided to leave him right there, is that correct?
- 24 A. Yes.
- Q. How did you wake up at 2:00?
- A. How did I wake up? I was, you know, I was high almost
- all the day on something that I did have.

1 I didn't know what time I would be leaving , coming up
2 or anything, so we set that time.

3 Q. Well, isn't in the middle of the night a little strange
4 time to be meeting him?

5 A. No.

6 Q. Was that your normal practice to meet him in the middle of
7 the night?

8 A. It was a lot less people around in the middle of the
9 night.

10 Q. But you were in a bar weren't you?

11 A. Yes.

12 Q. So you went up there and you went into the bar and you
13 bought there what has been marked as Government's
14 Exhibit #1 and #2 for identification as evidence here,
15 is that right?

16 A. Yes.

17 Q. How much did you pay for those?

18 A. Three thousand dollars.

19 Q. And to the best of your belief and knowledge that was and
20 is methamphetamine, is that correct?

21 A. Yes.

22 Q. And on the prior occasions when you had come down through
23 you had gotten the stuff that you had bought that
24 turned out to be Speed, right?

25 A. Yes.

26 Q. And you paid three thousand dollars for this quantity of
27 it, right?

1 Q. And you were also convicted of larceny of a motor vehicle
2 for an incident which took place on about October 9,
3 1973, in the Hampshire Superior Court in Hampton, Mass.,
4 is that correct?

5 A. Yes.

6 Q. Now, back up just a bit here, December 26th, you had no
7 indication that Mr. JOHNSON was coming to your house,
8 is that right?

9 A. Yes.

10 Q. He hadn't called you beforehand or anything like this?

11 A. No.

12 Q. When was the last time before that you had seen Mr. JOHNSON?

13 A. Some time early in November, late October, I don't
14 remember exactly.

15 Q. It was definitely late October or early November, is that
16 right?

17 A. Yes.

18 Q. No possibility it was late November or any other time in
19 December?

20 A. No.

21 Q. Absolutely sure that it was no later than early November,
22 is that a fair statement?

23 A. I'm not absolutely sure, no.

24 Q. Well, do you think it could have been any other time other
than early November, could it have been past that time?

A. Possibly.

Q. Could it have been in December?

1 A. No.

2 Q. You're sure it couldn't have been in December?

3 A. I'm sure.

4 Q. Now, on that particular occasion whatever occasion was the
last time you saw him, where did you see him?

5 A. Might have been in my cousin's house in Langdon,
6 New Hampshire.

7 Q. Would you spell the name of that place for us, please?

8 A. L-A-N-G-D-O-N.

9 Q. And, what was the name of your cousin?

10 A. Darlene FURBUSH.

11 Q. And did Mr. JOHNSON call to indicate that he was coming on
that occasion?

12 A. No.

13 Q. And did you have any telephone communications with Mr.
14 JOHNSON prior to - after that time that you saw him
15 there until the time that he arrived with you, until
16 the time he arrived on December 26th?

17 A. I don't remember.

18 Q. You don't remember?

19 A. No.

20 Q. Now, December 26th, the date that Mr. JOHNSON arrived, he
had difficulty getting there because the roads were
21 icy, is that right?

22 A. Yes.

23 Q. And you had been waiting on that date for the roads to
24 clear so that you could take off on your pre-planned

1 Q. Did you, can you tell us why you told him those lies?

2 A. I was terrified. I didn't want anything to do with the
3 situation. Once I realized what was happening.

4 Q. You realized that something was wrong?

5 A. Yes.

6 Q. You didn't want to get involved?

7 A. Right.

8 Q. Had something like this happened before?

9 A. Yes, it had.

10 Q. And would you tell us about that, please?

11 A. Well, it was a, on a trip from Florida, Stephen invited
12 me to go on. It was almost a year before that time
13 and I went to Florida with him on a vacation. He
14 went down on business to buy motor cycle parts. I was
15 curious, interested in the parts and you know, but I
16 had most of all was interested in getting to Florida
17 as it was the middle of the winter and he was willing
18 to, you know, pay the way down there. We were just
19 looking for company, that is all it was.

20 Q. And did something happen on the way back?

21 A. Yes, it did.

22 Q. And would you tell us about that, please?

23 A. Well, while we were in Florida, well, the morning
24 Steve had decided to leave, he had attached a U-Haul
trailer to the back of the car and when we reached New
Jersey we were pulled over because of some violation
that he supposedly made. Weaving or something, and the

1 State Trooper asked him to open the U-Haul trailer and
2 when he did, on his inspection, found motor cycles, took
3 the serial numbers and I guess it turned out that they
4 were stolen motor cycles.

5 Q. And had Steve told you anything about motor cycles being
6 in the trailer?

7 A. No, he was very careful not to tell me anything about
8 the trailer but to stay away from it.

9 Q. What did he tell you there was in the trailer?

10 A. He said there was fruit in the trailer.

11 Q. Was there in fact, fruit in the trailer?

12 A. There was fruit.

13 Q. Do you recall what sort of fruit?

14 A. Citrus fruit.

15 Q. Oranges, grapefruit?

16 A. Yes.

17 Q. Both kinds?

18 A. Yes.

19 Q. Once the determination was made that these motor cycles
20 were stolen, did you have some, were you asked some
21 questions by a State Police there?

22 A. I was questioned, yes.

23 Q. And what did you tell them about your relationship with
24 Stephen LOEWE on that occasion?

A. I told them that I knew him, that I had gone to Florida
with him and was just getting a ride back with him.

Q. Did you tell them that, what did you tell them about your

1 knowledge as to the motor cycles?

2 A. I told them that I had no knowledge.

3 Q. And, as a result of your being stopped, did Stephen LOEWE
4 and your answers to the State Police, were you arrested?

5 A. Yes, I was.

6 Q. Did you spend time in jail?

7 A. Yes, I did.

8 Q. How much time?

9 A. I believe it was five days, maybe seven days.

10 Q. What was the eventual disposition of that matter?

11 A. Well, I was, all the charges were dropped except for
12 one which was entering New Jersey for illegal purposes.

13 Q. And did you have to pay some fine in connection with that?

14 A. Yes, I did.

15 Q. Do you recall what that was?

16 A. I believe it was two hundred dollar fine plus some court
17 fees.

18 Q. Did you have that New Jersey incident in mind while you
19 were waiting in the Customs office for the inspector to
20 arrive to question you?

21 A. Yes, I did.

22 Q. Did that New Jersey incident weigh any factor in the answers
23 you gave to the questions posed?

24 MR. O'NEILL: Objection, it is leading.

THE COURT: Yes, the objection is sus-
tained.

Q. What role if any, did the experience in New Jersey play in

1 your response to the questions posed to you at High
2 Gate Springs?

3 A. Would you repeat that, please?

4 (QUESTION READ BY THE REPORTER)

5 A. I'm sorry, would you read that again?

6 (QUESTION READ AGAIN BY THE REPORTER)

7 A. Well, I realized that if Stephen had broken the law
8 and had again gotten in trouble, that unless I said
9 that I didn't know him and didn't have anything to do
10 with him that I would also be charged with the same,
11 the same things.

12 Q. On the occasion in New Jersey when you answered the ques-
13 tions of the Trooper, were you truthful?

14 A. Yes, I was.

15 Q. And it got you five days in jail and a two hundred dollar
16 fine?

17 A. That's right.

18 Q. Mr. JOHNSON, did you enter into any agreement, combination
19 with Stephen LOEWE to bring drugs from CANADA into this
20 country on December 28th or thereabouts?

21 A. No.

22 Q. Between the dates of November one and January tenth, Novem-
23 ber one and January ten, 1974, did you enter into any
24 agreement with Stephen LOEWE to import drugs illegally
into this country?

A. No, I didn't.

Q. Did you have any knowledge that those drugs were in that

JOHNSON - direct - GIBSON
cross - O'NEILL

1 car when you were stopped at the border?

2 A. No.

3 Q. Did you at any time, exercise any control over those two
4 bags containing the drugs that were found in Stephen
5 LOEWE's car on December 28th?

6 A. No.

7 Q. Are you aware of the provisions of the United States laws
8 concerning the crime of perjury?

9 A. Yes.

10 Q. Is everything you have testified to here today, the truth
11 as you know it?

12 A. Yes.

13 MR. GIBSON: I have no further questions.

14 THE COURT: Mr. O'Neill?

15 CROSS EXAMINATION BY MR. O'NEILL:

16 Q. Mr. JOHNSON how long have you known Mr. LOEWE?

17 A. Probably for eight to ten years.

18 Q. And you first got to know him when the two of you lived
19 in Milford, Connecticut, is that correct?

20 A. That is correct.

21 Q. And at that time you lived sort of across from each other?

22 A. Yes.

23 Q. And you got to be what might be described as close friends
24 with him, is that a fair statement?

A. Yes.

Q. And you maintained that friendship up to the time that he
was in New Hampshire, is that right?

1 A. Yes.

2 Q. And did you and he have similar interests?

3 A. Yes.

4 Q. And did you do things together with him fairly frequently?

5 A. Yes.

6 Q. How about working on bikes, did you work on bikes together?

7 A. Not ordinarily.

8 Q. But you both had an interest in bikes, is that right?

9 A. Yes.

10 Q. You were both looking for parts to bikes, is that right?

11 A. Yes.

12 Q. And Mr. JOHNSON visited you down there in Connecticut, about
13 how many occasions would you say, Mr. LOEWE visited you
14 down in Connecticut on a number of occasions, is that
15 correct?

16 A. Yes.

17 Q. About how many times would you say he visited you down
18 there in Connecticut, since 1969?

19 A. Probably not much more frequently than I visited him.

20 Q. And about how many times did you visit him?

21 A. Forty or fifty.

22 Q. So maybe forty or fifty visits down there to see you in
23 Connecticut, is that right?

24 A. Yes.

Q. So that's a total of eighty to a hundred times that you two
saw each other between 1969 and the end of 1973, is
that right?

1 A. Yes.

2 Q. I think you said that you figured it was about four years,
3 right?

4 A. Yes.

5 Q. So that's about, so if we average it out, that comes out to
6 about twenty-five trips a year?

7 A. (No oral response)

8 Q. Twenty-five times that you saw each other, on an average?

9 A. I guess, yes.

10 Q. Well, do you agree that's an average or don't you?

11 A. It might have been less.

12 Q. Well, what do you mean when you say it might have been less?

13 A. It could have been a lot less frequently.

14 Q. How much less frequently?

15 A. Well, I would say a hundred times in four years would be
16 twice a month and I don't think it would average down
17 to twice a month.

18 Q. About how often would you say you saw him then, on an
19 average?

20 A. Maybe once a month, maybe as much as twice a month.

21 Q. So once or twice a month on an average, maybe?

22 A. Yes.

23 Q. Now you were fairly close friends then, I take it?

24 A. Yes.

Q. Well, if you were seeing each other once or twice a month
over a distance like that, I mean, wouldn't you consider
that you were close friends?

- 1 A. I think as long as I have known him he's always been
2 a problem child of sorts, or whatever.
- 3 Q. There's no particular time when he began to have difficulty
4 with his parents that you know of?
- 5 A. No particular time.
- 6 Q. Excuse me, go ahead, had you finished?
- 7 A. Yah, I guess.
- 8 Q. Now, you went up to see Mr. JOHNSON, or Mr. LOEWE on
9 December 26th, right?
- 10 A. That's right.
- 11 Q. And did you call so that he knew you were coming?
- 12 A. I called from the DREWSVILLE Store.
- 13 Q. Had you called from CONNECTICUT in any manner?
- 14 A. I don't believe so.
- 15 Q. When was the last time that you had been there in NEW
16 HAMPSHIRE?
- 17 A. I'm not certain, I believe it was in November.
- 18 Q. And where had you gone that time or what had you done?
- 19 A. Ah, I think I stopped in and saw Stephen.
- 20 Q. Were you up there for another purpose on that occasion?
- 21 A. I think it was just vacation.
- 22 Q. And when did you say you think that was at the end of
23 November?
- 24 A. It might have been the end of November, I'm fairly
positive it was in November.
- Q. And at the time prior to that you had been up to see him
and you had been up to CANADA, or at least that is what

1 he testified to, is that correct?

2 MR. GIBSON: Your Honor, I think the
3 framing of that question is improper. There has been no
4 testimony by Mr. JOHNSON about two trips in November to see
5 Mr. LOEWE.

6 MR. O'NEILL: If it's confusing, Your
7 Honor, it might be helpful, I'll be happy to withdraw it and
8 rephrase it.

9 Q. Mr. JOHNSON, you heard Mr. LOEWE testify here concerning
10 the fact that you had made a prior trip to CANADA in
11 addition to this one hear, did you hear him testify
12 to that?

13 MR. GIBSON: Your Honor, I don't think
14 that was the nature of the testimony of Mr. LOEWE and I under-
15 stand that there was testimony about a trip to CANADA in late
16 October or early November and I am not certain that Mr.
17 JOHNSON's trip here was not the same one -

18 MR. O'NEILL: I think this -

19 THE COURT: We'll allow the question.

20 MR. GIBSON: He's assuming -

21 Q. Do you recall that testimony of Mr. Loewe's?

22 A. Testimony that I - -

23 Q. That at some point, you made a trip to CANADA with him prior
24 to the trip on the 26th?

25 A. Yes, I do.

26 Q. Did you make such a trip at some time?

27 A. Yes, I did.

1 Q. When was that trip?

2 A. It was in November.

3 Q. Pardon me?

4 A. That was in November.

5 Q. When was it in November, do you know?

6 A. I am not certain of the date.

7 Q. Well, when was it, at the beginning, the end or the middle,
when, approximately?

8 A. Seems to me might have been in the middle.

9 Q. About the middle of it?

10 A. Yes.

11 Q. Prior to Thanksgiving?

12 A. I am not certain.

13 Q. So it is possible then, it might have been after Thanks-
giving?

14 A. It is possible.

15 Q. How about during October is it possible it might have been
16 during October?

17 A. I don't think so.

18 Q. How about during December, is it possible it might have
19 been during December?

20 A. Probably not.

21 Q. Were there any in reference to that particular trip, you
22 have indicated I think that you came up on the 26th,
right?

23 A. Yes.

24 Q. And you came up at another time you believe it was in

IN THE
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FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee

v.

RAYMOND JOHNSON,
Appellant

Docket No. 74-2437

CERTIFICATE OF SERVICE

I do hereby certify that on the 10th day of February, 1975, I made service of the BRIEF and APPENDIX FOR THE UNITED STATES upon Raymond Johnson, by mailing two copies of the same to his attorney of record, David A. Gibson, Esquire, 139 Main Street, Brattleboro, Vermont 05301.

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